



Chief Justice Richard C. Howe
Chairman, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Heather Mackenzie-Campbell
From: Tim Shea *Shea*
Date: September 25, 2000
Re: NSF check as bail forfeiture

Some time ago you requested an opinion on whether a bail forfeiture can be treated as a guilty plea even though the check submitted to the court fails to clear because of insufficient funds. I believe the answer is "yes."

Section 77-7-21(1)(b) states that with the magistrate's approval, "a person may voluntarily forfeit bail without appearance being required in any case of a class B misdemeanor or less." Subsection (1)(c) states: "Voluntary forfeiture of bail shall be entered as a conviction and treated the same as if the accused pleaded guilty."

The Uniform Commercial Code states that a negotiable instrument (a check) is "an unconditional promise or order to pay a fixed amount of money," Because a check is an unconditional promise to pay money, the fact that the payor has insufficient funds to honor the check is not relevant to the question of whether the payor has voluntarily forfeited bail.

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.